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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NASREEN TAYLOR, Plaintiff, vs. ENTERPRISE RENT-A-CAR COMPANY, Defendant.	CASE NO. CV 10-1849-JST (SHx) **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

Plaintiff Nasreen Taylor, on behalf of herself and all others similarly situated, alleges that Enterprise Rent-A-Car violated (1) the Missouri Merchandising Practices Act, (2) the California Consumer Legal Remedies Act, and (3) the California Unfair Competition Law, when it failed to disclose that certain vehicles it rented and sold lacked side airbags that came standard on those makes and models. (Doc. 1.) Plaintiff's Complaint was originally brought in federal court; Plaintiff claimed that there was original jurisdiction under the Class Action Fairness Act ("CAFA"). *See* 28 U.S.C. § 1332(d). Generally, CAFA allows for minimal diversity, so long as there are at least 100 class members and the amount in controversy exceeds the sum or value of $5,000,000. *Id.* Defendant filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1), arguing, among other things, that the Court lacks jurisdiction because Plaintiff cannot recover the jurisdictional amount required by CAFA. (Doc. 46.) For the following reasons, the Court GRANTS Defendant's Motion to Dismiss for lack of jurisdiction.

I. Legal Standard

When a motion is made pursuant to Federal Rule of Civil Procedure 12(b)(1), the plaintiff has the burden of proving that the court has subject matter jurisdiction. *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001), *overruled on other grounds by Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). When considering a motion to dismiss under Rule 12(b)(1), the Court is not restricted to the pleadings and may review any evidence to resolve factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

II. Discussion

First, Article III of the U.S. Constitution requires a party to allege an actual case or controversy. "When the suit takes the form of a class-action, Article III requires that the

representative or named plaintiff must share the same injury or threat of injury." *DuPree v. United States*, 559 F.2d 1151, 1153 (9th Cir. 1977) (citing *Warth v. Seldin*, 422 U.S. 490, 502 (1975)). This is because the named plaintiff in a class action must meet all of the jurisdictional requirements to bring an individual suit asserting the same claims, including standing. 5 James Wm. Moore, et al., *Moore's Federal Practice* § 23.63[1][b] (2011). The requirement that the plaintiff meet Article III standing requirements is distinct from the class action requirements under Rule 23.[1] *See O'Shea v. Littleton*, 414 U.S. 488, 494 (1974); 1 Alba Conte et al., *Newberg on Class Actions* § 2:9 (2010) ("Care must be taken, when dealing with apparently standing-related concepts in a class action context, to analyze individual standing requirements separately and apart from Rule 23 class action prerequisites. Though the concepts appear related, in that they both seek to measure whether the proper party is before the court to tender issues for litigation, they are in fact independent criteria. They spring from different sources and serve different functions. Often satisfaction of one set of criteria can exist without the other.").

Here, the Complaint alleges that Plaintiff purchased a vehicle from Defendant, but it does not allege that Plaintiff rented a vehicle from Defendant. (Doc. 1 ¶ 11.) Nor does Plaintiff argue in her Opposition that she could amend the Complaint in good faith to allege that she ever rented a vehicle from Defendant. (*See generally* Doc. 52.) Rather, Plaintiff argues that she can represent renters in addition to purchasers, because "[b]oth renters and purchasers have been subjected to precisely the same harm." (*Id.* at 9.) The

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[1] At oral argument, Plaintiff relied on a number of cases for the proposition that Defendant's arguments regarding Plaintiff's standing were premature, stating that class certification issues were "logically antecedent" to Article III concerns. As noted above, the Court concludes that Plaintiff is incorrect; the cases cited by Plaintiff instead stand for the proposition that, in certain instances, a reviewing court dealing with an already-certified class may reject a class based on a failure to comply with requirements set forth in the Federal Rules of Civil Procedure, in lieu of rejecting the class due to the named plaintiff's lack of Article III representative standing. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 612 (1997); *Potter v. Hughes*, 546 F.3d 1051, 1055 (9th Cir. 2008). None of these cases stand for the proposition set forth by Plaintiff that a court should postpone a review of a plaintiff's Article III standing until the class-certification stage.

Complaint, however, alleges an economic injury to renters and purchasers: "Plaintiff and the members of the class . . . would not have purchased and/or rented and/or would not have paid as much for the purchase or rental if they were truthfully and fully informed of material facts concerning the vehicles." (Doc. 1 ¶ 82.) Renters, unlike purchasers, only used the vehicle for a limited period of time. In addition, there are no allegations that any renters currently have any interest in a vehicle, unlike purchasers who might still own and be using their vehicles. The Court concludes that although Plaintiff has alleged that she suffered an economic injury as a purchaser of a vehicle, Plaintiff has not alleged that she suffered an economic injury as a renter of a vehicle. Because Plaintiff has not alleged the same injury as that of the renters, she does not have Article III standing to represent renters in this action.

Second, "[t]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The Supreme Court, however, has long held that Congress intended to restrict federal jurisdiction in diversity cases. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). Thus, "[t]he fundamental principle laid down in diversity cases . . . remains under CAFA: the party asserting federal jurisdiction has the burden of showing the case meets the statutory requirements for the exercise of federal jurisdiction and therefore belongs in federal court." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 399 (9th Cir. 2010).

Here, Defendant argues that the amount in controversy is less than CAFA's statutory requirement of $5,000,000. Where, as here, the plaintiff specifically alleges an amount in controversy in her complaint, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith." *St. Paul Mercury*, 303 U.S. at 288.

> It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. The

> inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. Nor does the fact that the complaint discloses the existence of a valid defense to the claim. But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed. Events occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction.

Id. at 289-90. Therefore, Defendants must show that from either the face of the pleadings or the proofs, that it is apparent to a legal certainty that Plaintiff cannot recover $5,000,000.

Plaintiff's first cause of action alleges violations of the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.020.[2] Missouri courts use the "benefit of the bargain" rule in assessing actual damages under the MMPA.[3] *See, e.g.*, *Schoenlein v. Routt Homes, Inc.*, 260 S.W.3d 852, 854 (Mo. Ct. App. 2008). "[T]his rule allows the

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[2] The Court notes that Plaintiff failed to present arguments that would support a finding that damages under either the California Consumer Legal Remedies Act, or the California Unfair Competition Law, would provide for damages larger than what is potentially available under the MMPA.

[3] Missouri law allows, "a plaintiff to recover consequential damages, in addition to benefit of the bargain damages, for expenses that are attributable to the fraud." *Bird v. John Chezik Homerun, Inc.*, 152 F.3d 1014, 1017 (8th Cir. 1998); *see also Ullrich v. CADCO, Inc.*, 244 S.W.3d 772, 779 (Mo. Ct. App. 2008). Plaintiff has failed to allege in her Complaint that she suffered any consequential damages, such as paying to insert side airbags into her vehicle, as a result of the alleged fraud. Therefore, the Court concludes that, on the face of the pleadings, Plaintiff has failed to allege that she or any other potential class member suffered any consequential damages.

defrauded party to be awarded the difference between the actual value of the property and the value if it had been as represented, measuring the damages at the time of the transaction." *Id.*

Here, Defendant has set forth evidence that there is no difference between the actual value of the property and the value if it had been as allegedly represented, i.e., without or with a side airbag. Defendant, through declarations, establishes that the lack of side airbags does not decrease the value of the cars in question in this action. Although Plaintiff argues that she would have paid less for such a vehicle, or that she would not have purchased the vehicle to begin with, she does not set forth any other evidence establishing that she suffered any damages using the appropriate "benefit of the bargain" measure.[4] Therefore, Defendants have shown to a legal certainty that the claim is really for less than the jurisdictional amount.

[4] In *Scott v. Blue Springs Ford Sales, Inc.*, the plaintiff argued that his car was worth nothing because he could not drive it nor could he sell it, due to the undisclosed salvage title, and he also submitted evidence supporting a finding that he immediately stopped driving his vehicle when he learned it had been issued a salvage title. 215 S.W.3d 145, 158, 182 (Mo. Ct. App. 2006). The court held that an owner of a vehicle is qualified to give an estimate of its fair market value which the fact finder is free to believe or reject. *Id.* at 182. Here, the Court is not persuaded by Plaintiff's subjective valuation of her car, because she has continued to drive the vehicle in question, despite its lack of a side airbag.

III. Conclusion

For the foregoing reasons, the Court GRANTS Defendant's Motion to Dismiss on the basis that the Court lacks jurisdiction. Should Plaintiff believe that she can, in good faith, file a complaint over which there would be federal jurisdiction, she must do so **no later than 30 days** from the filing of this order.

DATED: March 30, 2011

JOSEPHINE STATON TUCKER
UNITED STATES DISTRICT JUDGE